IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 191

EDWARD O. SAMS,
Petitioner,

v.

THE STATE OF GEORGIA,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Georgia

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QUESTION PRESENTED

Is an affidavit in support of a search warrant sufficient when it shows (1) that an informer has personal knowledge of the crime, (2) that the informer has provided reliable information pertaining to the same category of crime in the past, (3) that the crime is being committed at specified locations, and (4) that a particular part of the criminal transactions occur on a specified day of the week?

THE FACTS

On Monday, December 23, 1968, Atlanta Police officers executed a search warrant at petitioner's place of

business and obtained written memorials of a gambling operation.* The gambling records were subsequently introduced, over objection, at petitioner's trial. Petitioner has maintained throughout the course of this litigation that the affidavit in support of the search warrant is insufficient.

The text of the affidavit in support of the search warrant is as follows:

> "We have received information from an informer that has proven reliable in the past on gambling and lottery information who states that he has personal knowledge that Eddie O. Sams is taking bets on ball games. The informant states that most of this betting is conducted from Eddie Sams home located in Cobb County on Old Tritt Rd. and that Eddie Sams pays off and collects monies for these bets at his service sta. on Ponce DeLeon Av. on Monday mornings following the weekend ball games. The informant states that Eddie Sams will have collection sheet on his person when he arrives at work on Mons. The informant also stated that some bets are handled at the ser. sta. itself and that people who gamble come and go from this location. This information has been received during the last month several times, the latest time being Dec. 17th, 1968. Subject Eddie Sams has previous arrests for this type violation and bets have been found before at this location and we have seen people known to us to be involved in betting on athletic contests at this location. For the above reasons I believe that Eddie O. Sams is violating Sec. 26-6410 at the above location."

*The search warrant was not sequentially paginated in the record transmitted to the Georgia Court of Appeals. The State does not have access to the record as repaginated and transmitted to the Court.

The foregoing affidavit was sworn to by an Atlanta Police officer. Pursuant to that affidavit, a search warrant was issued by a Judge of the Criminal Court of Fulton County.

REASONS FOR DENYING THE WRIT

The Court has fully explained the standards applicable to affidavits submitted to a magistrate in support of an application for the issuance of a search warrant. *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964); *Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969). The case *sub judice* does not present a novel situation which requires a further exposition of the standards heretofore prescribed by the Court. It is submitted that the body of the law has been adequately developed and that this case should not, for that reason, commend itself to the attention of the Court on certiorari.

In finding the affidavit adequate, the Georgia Court of Appeals correctly applied the *Aguilar* and *Spinelli* doctrines. *Sams v. The State*, 121 Ga. App. 46 (1970). That the determination in the court below is correct may be readily demonstrated by comparing the text of the affidavit with the standards enunciated by the Court.

In *Aguilar*, the court held that the affidavit must contain "some of the underlying circumstances from which the informant concluded" the existence of the illegal activity and "some of the underlying circumstances from which the officer concluded that the informant . . . was 'credible' or his information 'reliable.'" *Aguilar v. Texas*, *supra*, 12 L.Ed.2d 729.

The affidavit in the *Spinelli* case was deficient because

it did not show the affiant's reason for believing the informer to be reliable and the tip did not contain the underlying circumstances from which the informer concluded that a crime was being committed. In further explanation, the court said

> "In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation." *Spinelli v. United States, supra,* 21 L.Ed.2d 644.

The *Aguilar* and *Spinelli* decisions require that the affiant state his reason for believing in the reliability of a confidential informant. In the case *sub judice,* the policeman demonstrated his reason for crediting the informant's information by affirming that the informer furnished information which "has proven reliable in the past on gambling and lottery" cases. This statement of the underlying circumstance relied upon by the officer for crediting the informant's information fully accords with the requirements of *Aguilar* and *Spinelli.*

The underlying circumstances from which the informant concluded that a crime was being committed are fully set out in the affidavit. The affidavit shows that the informant asserted that (1) he had personal knowledge that petitioner was taking bets, (2) that a majority of the betting operation was conducted at petitioner's home on Old Tritt Road, (3) that petitioner paid off and collected money at his service station on Ponce De-Leon Avenue, (4) that payoffs and collections were han-

dled on Monday mornings, (5) that petitioner would have a collection sheet on his person when he came to work on Monday morning, and (6) that some bets were taken at the service station itself. This detailed account of the manner in which the crime was being committed is sufficient. Its detail completely dispels the notion that the information may have been based merely upon a rumor or reputation.

The concept of probable cause deals, as its name implies, with probabilities. A *prima facie* showing of the existence of criminal activity is not required, but rather that it is probably occurring. *Beck v. Ohio*, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964). The affidavit in the case now before the Court pointed inescapably to the probability of existing criminal activity. In issuing a search warrant, a magistrate is required to determine the existence of probable cause based upon a common sense reading of the affidavit. *United States v. Ventresca*, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965). The State submits that the issuance of the search warrant was proper.

CONCLUSION

For the foregoing reasons, the respondent submits that the writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Marion O. Gordon, one of the attorneys for respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 23rd day of September, 1970, I served a copy of the foregoing Brief in Opposition upon the petition by mailing a copy of the same in a properly addressed envelope with postage prepaid to his counsel of record, LEROY C. HOBBS, 1517 William Oliver Building, Atlanta, Georgia 30303.

MARION O. GORDON